



GENERAL SERVICES ADMINISTRATION

48 CFR Parts 512 and 552

[GSAR Case 2020-G505; Docket No. GSA-GSAR-2022-0018;

Sequence No. 1]

RIN 3090-AK18

**General Services Administration Acquisition Regulation
(GSAR); Clarify Commercial Products and Services Contract
Terms and Conditions**

AGENCY: Office of Acquisition Policy, General Services
Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to make technical amendments to GSAR clause 552.212-4 regarding commercial items and its prescribing section. This GSAR clause is a deviation to FAR clause 52.212-4. These technical amendments update obsolete references, correct typographical errors, and make minor editorial changes to improve clarity of GSA's deviation to FAR clause 52.212-4.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF
PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas Giles and
Mrs. Johnnie McDowell, Procurement Analyst, at 202-718-
6112, for clarification of content. For information

pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or *GSARRegSec@gsa.gov*. Please cite GSAR Case 2020-G505.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is amending the GSAR to make several minor technical amendments to 552.212-4 and its prescribing section to improve clarity of GSA's Deviation to the equivalent FAR Commercial Items Clause. These technical amendments will assist contracting offices and contractors with understanding applicability of GSA's deviation to their specific commercial procurement actions.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

The final rule makes general wording and cross-reference changes to GSAR clause 552.212-4 and other related sections. For example, the final rule corrects the prescribing section cross-referenced in the introductory text of GSAR clause 552.212-4 from "512.301(e)", which is now obsolete, to "512.301(b)", which is current. In addition, the prescribed use of GSAR clause 552.212-4 is not limited to a defined circumstance. Therefore, the final

rule removes the term "Alternate II" and any associated language from GSAR clause 552.212-4 to clarify the clause is a "Deviation" as defined and used by FAR 1.401 and GSAR 501.4, and not an "Alternate" as defined by FAR 2.101.

Other technical amendments include minor grammatical corrections and minor editorial changes to clarify the applicability of GSA's Deviation to FAR clause 52.212-4.

IV. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a "major rule" may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of

the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule is not a "major rule" under 5 U.S.C. 804(2).

VI. Publication for Public Comment Not Required for This Rulemaking

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because GSA is not issuing a new regulation; rather, this rule merely makes minor editorial changes to improve clarity and corrects

typographical errors and outdated cross-references in the GSAR. The rule does not expand or shrink the universe of products or services that the Government may procure using GSAR part 552, nor does it change the terms and conditions vendors must comply with. This rule does not add any new solicitation provisions or contract clauses nor does it add any new burdens because the case does not add or change any requirements with which vendors must comply.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section VI. of this preamble). Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VIII. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 512 and 552

Government procurement.

Jeffrey A. Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy,
General Services Administration.

Therefore, GSA amends 48 CFR parts 512 and 552 as set forth below:

1. The authority citation for 48 CFR parts 512 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 512—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

512.301 [Amended]

2. Amend section 512.301 by removing the third sentence of paragraph (b).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend 552.212-4 by—

a. Revising the section heading and date of the clause;

b. Removing from the introductory text, the phrase, “512.301(e)” and adding the phrase “512.301(b)” in its place; and

c. Removing the Alternate II introductory text.

The revisions read as follows:

552.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services (FAR DEVIATION 52.212-4).

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CONTRACT TERMS AND CONDITIONS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES
(FAR DEVIATION 52.212-4) (JAN 2023)

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